

BOARD OF APPEALS CASE NO. 5029

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BEFORE THE

APPLICANT: Thomas Dixon

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit an above
ground fuel tank within the side yard
setback; 1702 Conowingo Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/5/00 & 4/12/00

HEARING DATE: May 17, 2000

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Record: 4/7/00 & 4/14/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Thomas J. Dixon, a commercial tenant on the subject property, is requesting a variance to Sections 267-26(C)(5)(d) and 267-40(B), Table XIII of the Harford County Code, to allow an existing above-ground fuel tank to be within the required ten (10) foot side yard setback (7 foot 4 inches existing) in a CI/Commercial Industrial District.

The property is located at 1702 Conowingo Road, Bel Air, in the Third Election District. The parcel is more specifically identified as Parcel No. 18, in Grid 1A, on Tax Map 41. The property contains approximately .70 acres and is zoned CI/Commercial Industrial. It is currently located next to the International Harvester Sales and Service company.

The Applicant, Mr. Thomas Dixon, 216-F Crocker Drive, Bel Air was the first to appear and testify that he rents space on the subject property out of which he conducts both a storage shed and a fuel oil business. According to Mr. Dixon, the subject fuel oil tank was placed on the property six years ago, and was unknowingly set 2.6 feet within the required side-yard setback. The tank weighs thirteen (13) tons and is filled with fuel oil. It sits on a "crush and run" (a type of gravel) pad and there is an adjacent concrete pad in front of the tank which serves as a loading platform. There is pipe which runs from the tank to the loading area.

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The closest structure to the tank is at least 25 feet away. Mr. Dixon testified that it would be extremely difficult to move the tank, not only because of its weight, but because everything associated with the tank, including the pipe, pad and loading area, would have to be moved as well. It was Mr. Dixon's testimony that he is not aware of any health or safety hazards resulting from the encroachment into the setback, and he is not aware of any complaints from surrounding commercial businesses regarding the location of the tank on the property.

Mr. James Griffiths, 900-A Ring Factory Road, Joppa, the owner of the subject property, appeared and testified that he is not aware of any complaints or problems resulting from the location of the tank within the required setback. He supports the request for the variance to allow the fuel tank to remain in its current location.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the Department's report and recommendation. According to Mr. McClune, the closest building to the subject fuel tank on neighboring commercial property is approximately eighty (80) feet away. The Department believes that the circumstances relating to the subject property are unique because of the variety of businesses, structures and other items which are located there. Mr. McClune testified that the surrounding commercial businesses are not adversely impacted as a result of the encroachment into the setback, and the request for the 2.6 foot variance is considered by the department to be minor in nature. As a result, the Department's recommendation is that the request for the variance be approved. No witnesses appeared in opposition to the request.

CONCLUSION:

The Applicant is requesting a variance to Sections 267-26(C)(5)(d) and 267-40(B), Table XIII of the Harford County Code to allow an existing fuel oil tank to be located 2 feet and 8 inches within the required side yard setback, leaving an existing setback of 7 feet and 4 inches. Section 267-26(C)(5)(d) states:

“Business, industrial, institutional and continuing care retirement community uses: same front, side and rear lot lines as required for the principal structure.”

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The setback requirements for the principal structure in a CI District, and those applicable here, are set forth in Section 267-40(B), referencing Table XIII of the Code. The minimum side yard width for a retail trade/service in this District is ten (10) feet. Section 267-11(A) of the Code provides that variances may be granted if:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The uncontradicted evidence offered by way of testimony and documented in the Department of Planning and Zoning's Staff Report demonstrates that the circumstances relating to this particular commercial property, in terms of the types of businesses and services located on the property, and their accompanying accessory structures, are somewhat unique. It is clear that requiring the relocation of the subject fuel tank, as well as its pad, its pipeline and loading area, would create significant hardship and practical difficulty for the Applicant. In addition, the existing layout of the property, with the other operational businesses and services, severely limits alternative sites for the tank and its accessories. There was no evidence to suggest that the current location of the tank within the required setback is substantially detrimental to adjacent properties, and in fact the location of the tank appears to be compatible with the businesses conducted on the neighboring properties. Approval of the variance would not appear to impair the purpose of the Code (in that there does not appear to be any adverse impacts resulting from the location of the fuel tank), nor would it appear to impair the public interest.

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Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request to allow an existing fuel tank to be located within the required side yard width by 2 feet 8 inches (7 feet 4 inches from the property line) be approved, on the condition that the Applicants obtain all necessary permits and inspections.

Date JUNE 30, 2000

Valerie H. Twanmoh
Zoning Hearing Examiner